

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PAN AMERICAN GRAIN
MANUFACTURING CO., INC.
Plaintiffs

v.

DAVID COHEN, in his official capacity as
REGIONAL DIRECTOR of NATIONAL
LABOR RELATIONS BOARD, REGION
12,

Defendant

CIVIL ACTION NO.

PETITION FOR WRIT OF MANDAMUS

**PETITION FOR WRIT OF MANDAMUS AGAINST NLRB'S REGIONAL DIRECTOR
(REGION 12)**

COMES NOW Petitioner Pan American Grain Manufacturing Co. Inc. ("Pan American Grain" or the "Petitioner") and sets forth the following petition for writ of mandamus (the "Petition for a Writ of Mandamus" or "Mandamus") pursuant to 28 U.S.C. §1361.

Defendant in the instant litigation has failed to discharge his duty, under the National Labor Relations Act ("NLRA"), to certify the results of the NLRB-supervised election (the "Representation Election") held at the Pan American Grain's plant on December 21, 2023 between the incumbent union Congreso de Uniones Industriales de Puerto Rico (the "Congreso") and the challenger Unión de Tronquistas de Puerto Rico Local 901 (the "Teamsters").

But for the Regional Director's blatant failure to perform his clear and nondiscretionary duty under the NLRA, Pan American Grain has been left with no choice but to enlist the assistance of this Honorable Court in requesting that it issues a Mandamus against the Regional Director.

In support of this Petition for a Writ of Mandamus, Plaintiff Pan American Grain shows as follows:

1. Pan American Grain is a for profit legal person established under the laws of the Commonwealth of Puerto Rico.
2. David Cohen is the NLRB's Regional Director for Region 12.
3. The Congreso until recently was the exclusive representative of the members of the bargaining unit at Pan American Grain.
4. The collective bargaining agreement ("CBA") between Pan American Grain and Congreso expired in 1998. At no point have the parties entered into a new CBA.
5. On November 8, 2023, the Teamsters filed a petition (the "RC Petition") before the NLRB requesting the holding of the Representation Election at Pan American Grain in order to be certified as the exclusive bargaining representative of Pan American Grain's employees. **Exhibit 1**
6. Shortly thereafter, on November 9, 2023, the NLRB scheduled a representation hearing (the "Representation Hearing") for December 1, 2023. Pan American Grain, the Congreso and the Teamsters attended the Representation Hearing. **Exhibit 2**
7. On December 1, 2023, the parties signed a stipulated election agreement (the "Stipulated Election Agreement") for holding the Representation Election at Pan American Grain on December 21, 2023.
8. The question presented to Pan American Grain's employees on the ballot was "Do you wish to be represented for purposes of collective bargaining by Congreso de Uniones Industriales or Unión de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters?" The choices on the ballot were "Congreso de Uniones

Industriales de Puerto Rico,” “Unión de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters” or “Neither.” **Exhibit 3**

9. The Representation Election held at Pan American Grain, under the supervision of the NLRB, took place on December 21, 2023. The outcome of the Representation Election was that the Teamsters were favored by an overwhelming majority: obtaining 40 votes to the Congreso’s 6 votes. **Exhibit 4**
10. Close to seven months have elapsed since the Representation Election was held and the NLRB’s Regional Director has inexplicably failed to certify the results, leaving Pan American Grain in a critically dangerous position.
11. On May 2, 2024, Pan American received a letter from the Teamsters threatening to declare a strike at the mill if Pan American did not agree to meet and initiate negotiations for a CBA. **Exhibit 6**
12. Because Pan American cannot meet the Teamsters’s request in the absence of the Regional Director’s certification (the “Certification”) of the Representation Election, it was left with no choice but to decline the Teamsters’s invitation. Doing otherwise would have exposed Pan American to the filing of charges at the hands of Congreso.
13. It was against this background that Pan American Grain wrote a letter (“Pan American Grain’s First Letter”) to the NLRB’s Regional Director on May 7, 2024. **Exhibit 6**
14. Pan American Grain’s First Letter requested that issuance of the Certification at the earliest convenience. At no point did the Regional Director respond. Needless to say, no Certification was issued.
15. On May 13, 2024, the Teamsters sought, yet again, authorization from Pan American Grain to access its facilities in order to engage in talks with its workers, and initiate negotiations for a new CBA. **Exhibit 5**

16. Pan American Grain declined, once more, the Teamsters's request.
17. Placed against a rock and a hard place, and undeterred by the Regional Director's deafening silence, Pan American wrote a second letter ("Pan American Grain's Second Letter") to the NLRB's Regional Director on May 16, 2024. **Exhibit 7**
18. Pan American Grain's Second Letter went into further detail, discussing in no uncertain terms the dangers it now faced (including its employees) but for the Regional Director's inexcusable failure to certify the results of the Representation Election.
19. True to form, the Regional Director did not respond to Pan American Grain's Second Letter nor did he issue the required Certification.
20. Meanwhile, the Teamsters continue to threaten Pan American with a strike if it continues with its non-recognition position. Because the Regional Director has failed to certify the result of the Representation Election, Pan American Grain cannot recognize the Teamsters and, hence, cannot grant them the access they seek without risking legal action from Congreso, which alleges that it still continues to represent Pan American Grain's workers and requests the resumption of negotiations with Pan American for a new CBA.
21. But for the Regional Director's failure to issue the Certification the feud between the two unions has escalated, souring the mood among the employees --- which in turn have required constant oversight and intervention by their supervisors at the plant.
22. In filing the instant Petition for a Writ of Mandamus, Pan American Grain is not siding with either the Congreso or the Teamsters, but rather requesting that this Honorable Court direct the Regional Director to perform his nondiscretionary duty by issuing the Certification, as required under the NLRA.¹

¹ A copy of the instant motion and other relevant parties will be sent to the Teamsters and Congreso. Neither union is a party, but they might have an interest regarding the instant matter.

WHEREFORE, Pan American Grain respectfully requests:

That this Honorable Court **DIRECT** the Defendant to do his duty under the NLRA in the following way:

- a. Issue the Certification confirming or rejecting the results of the Representation Election held at the facilities of Pan American Grain on December 21, 2023, between the Teamsters and Congreso and determine which union is the exclusive bargaining representative of Pan American Grain's employees

This Petition is further supported by a Memorandum of Law filed contemporaneously herewith, along with exhibits thereto.

RESPECTFULLY SUBMITTED in San Juan, Puerto Rico, on this 20th of June 2024.

IT IS HEREBY CERTIFIED that on this same date the foregoing motion was filed by uploading it to the CM/ECF system, which will send automatic notices to the attorneys of record.

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